



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Shakeel A. Kahn, M.D.
Decision and Order**

On December 20, 2016, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Shakeel A. Kahn, M.D. (hereinafter, Registrant), of Casper, Wyoming. GX 1. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration, on the ground that he "do[es] not have authority to handle controlled substances in the State of Wyoming, the [S]tate in which [he is] registered with the DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

As for the jurisdictional basis of the proceeding, the Show Cause Order alleged that Registrant is registered "as a practitioner in [s]chedules II-V pursuant to" Certificate of Registration No. FK5578464, at the address of "301 South Fenway St., Suite 202, Casper, Wyoming." *Id.* The Order alleged that this registration expires "on December 31, 2018." *Id.*

As for the substantive ground for the proceeding, the Show Cause Order alleged that on November 29, 2016, Registrant's "authority to prescribe and administer controlled substances in the State of Wyoming was suspended," and that he is "without authority to handle controlled substances." *Id.* The Show Cause Order thus asserted that his registration is subject to revocation. *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)) (other citations omitted).

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement on the matters of fact and law at issue while waiving his right to a hearing, the procedures for electing either option, and the consequence of failing to

elect either option. *Id.* at 2. Also, the Show Cause Order notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

According to the declaration of a DEA Special Agent, on December 20, 2016, he personally served the Show Cause Order on Registrant at his residence. GX 5. The Government represents that the Agency “has not received a request for hearing or any other reply from” Registrant. Gov. Request for Final Agency Action, at 2. Based on the representation of the Government, I find that more than 30 days have now passed since the Show Cause Order was served on Registrant, and that Registrant has neither requested a hearing nor submitted a written statement while waiving his right to a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement. Based on the evidence submitted by the Government, I make the following factual findings.

FINDINGS

Registrant is the holder of DEA Certificate of Registration No. FK5578464, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the address of 301 S. Fenway St., Suite 202, Casper, Wyoming. GX 2. His registration does not expire until December 31, 2018. *Id.*

Registrant is also the holder of Wyoming Physician License No. 7633A. GX 3, at 1. However, on November 29, 2016, the Wyoming Board of Medicine ordered the summary suspension of Registrant’s Physician License effective the same day, thereby suspending “his authority and ability to practice medicine in the state of Wyoming” pending “the completion of a contested case hearing.” *Id.* at 18. According to the online records of the Wyoming Board of Medicine of which I take official notice, Registrant’s medical license remains suspended as of the date of this Decision and Order. *See* 5 U.S.C. 556(e), 21 CFR 1316.59(e).

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f).

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR

12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, for the purposes of the CSA, it is of no consequence that the Wyoming Medical Board has employed summary process in suspending Registrant's state license.

As found above, on November 29, 2016, the Wyoming Board of Medicine ordered the summary suspension of Registrant's Physician License effective the same day, thereby suspending "his authority and ability to practice medicine in the state of Wyoming." GX 3, at 18. I therefore find that Registrant lacks authority to dispense controlled substances in Wyoming, the State in which he is registered with the Agency and that he is not entitled to maintain his registration. *See Hooper*, 76 FR at 71371; *Blanton*, 43 FR 27616. Accordingly, I will order that his registration be revoked. 21 U.S.C. 824(a)(3).

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FK5578464 issued to Shakeel A. Kahn, M.D., be, and it hereby is, revoked. I further order that any application of Shakeel A. Khan, M.D., to renew or modify this registration be, and it hereby is, denied. This Order is effective **immediately.**¹

Date: May 15, 2017

Chuck Rosenberg
Acting Administrator

¹ For the same reasons that led the Wyoming Board to summarily suspend Registrant's medical license, I find that the public interest necessitates that this order be effective immediately. 21 CFR 1316.67.

